

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2023-43

November 14, 2023

ALBERTA HEALTH SERVICES

Case File Number 025069

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to Alberta Health Services (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for records relating to patients hospitalized with COVID-19, as well as records relating to the effectiveness of COVID-19 vaccinations.

The Public Body located one page of responsive records, which was provided to the Applicant. The Public Body informed the Applicant that no further responsive records were located. The Public Body also informed the Applicant that Alberta Health is likely to have responsive records.

The Applicant requested a review of the search for records conducted by the Public Body, and subsequently an inquiry.

The Adjudicator found the Public Body met its duty to assist the Applicant by conducting an adequate search for responsive records.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10, 15, 72.

Authorities Cited: **AB** Orders 96-022, 97-006, 2000-021, 2001-016, F2007-029, F2022-42

I. BACKGROUND

[para 1] The Applicant made an access request on August 31, 2021 to Alberta Health Services (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for:

[A]ll studies, reports, number of patients in hospital currently with Covid-19 that are vaccinated and unvaccinated, statistics, death counts, vaccinated status of each death from covid-19 confirmed or covid-19 variant confirmed.

I also request all information that AHS has in their control in relation to the covid-19 vaccines on their effectiveness. I would also like the information on how they determined the continued use of these vaccines and booster shots was affirmed.

[para 2] The Public Body located one page of responsive records, which was provided to the Applicant. The Public Body informed the Applicant that no further responsive records were located. The Public Body also informed the Applicant that Alberta Health is likely to have responsive records. In its September 23, 2021 response to the Applicant, the Public Body states:

AHS wishes to advise that with respect to information in relation to the covid-19 vaccines and their effectiveness, and reports/studies on how it was determined the continued use of vaccines and booster shots were affirmed, the Alberta Advisory Committee on Immunization, and Alberta Health, to which this committee reports, would have all relevant information specific to this portion of your request. AHS Public Health & Surveillance Infrastructure does not have any relevant information, reports, or studies.

As well, with respect to all studies, reports, statistics, death counts, vaccinated status of each death from covid-19 confirmed or covid-19 variant confirmed, AHS Public Health & Surveillance Infrastructure does not have any studies or reports, nor is AHS able to access the Alberta Health data asset to produce any analyzed hospitalization and death data. Again, please contact Alberta Health directly for this portion of your request at: [...]

[para 3] The Applicant requested a review of the search for records conducted by the Public Body. Subsequent to the review, the Applicant requested an inquiry. The Applicant's request for inquiry primarily addressed his views on the effectiveness of COVID-19 vaccinations and measures taken by officials during the pandemic.

[para 4] This inquiry relates to the adequacy of the Public Body's search for records responsive to the Applicant's request, set out above. The parties were advised of this in the Notice of Inquiry, and were instructed to limit their submissions to this issue.

II. RECORDS AT ISSUE

[para 5] As the issue relates to the duty to assist, there are no records at issue.

III. ISSUES

[para 6] The issue set out in the Notice of Inquiry, dated September 7, 2023, is:

Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act (duty to assist applicants)?

In this case, the Commissioner will consider whether the Public Body conducted an adequate search for responsive records.

IV. DISCUSSION OF ISSUES

[para 7] The Notice of Inquiry instructed the Applicant to set out in his submission the reasons for believing more records exist than were located and provided to him and/or describe as precisely as possible records/kinds or records they believe should have been located and provided.

[para 8] The Applicant provided a lengthy submission to this inquiry. Much of that submission does not relate to the matter at issue. The Applicant summarized his primary concerns as follows (links omitted):

1. Introduction:

I acknowledge the importance of safeguarding public health information, especially during the COVID-19 pandemic. However, I have serious concerns regarding the collection, retention, and usage of personal health data, which has implications for our privacy, genetic rights, and fundamental freedoms.

2. Covid-19: The Great Reset:

I would like to draw attention to the concerns surrounding the potential manipulation of COVID-19 data to advance the agenda outlined in "Covid-19: The Great Reset" by Klaus Schwab, founder of the World Economic Forum. Premier Jason Kenney's statements on December 4, 2020, mentioning the distribution of this book among world leaders and parliament members, warrant a thorough examination.

3. Biolab and HostSeq:

I seek clarification regarding the activities of Biolab and HostSeq in collecting whole human genome data using Health Canada-approved COVID-19 testing kits. It is our understanding that assurances were given that these tests did not collect human genome data. Any discrepancies in this regard may represent a violation of genetic and human rights.

4. Hospitalization Statistics:

I note that Alberta Health has removed Influenza as a leading cause of death from all previous copies of Leading Causes of Death. This raises questions about the transparency and accuracy of COVID-19 data reporting, and the potential impact on public health decisions.

5. Covid-19 Vaccine Outcomes:

I wish to draw your attention to the Covid-19 vaccine outcomes as of September 7, 2021, and July 11, 2022, which reveal significant disparities among vaccinated and unvaccinated individuals in terms of hospitalization and complications. These statistics

are crucial in understanding the actual impact of vaccination campaigns and related data-driven decisions.

5. Ingram Court Case and ONA Decision:

The recent court case involving Rebecca Marie Ingram and the arbitration decision in Ontario Nurses' Association (ONA) vs. St. Michael's Hospital highlight the importance of scrutinizing data-driven decisions that impact individuals' rights and freedoms.

6. Protection of Academic and Professional Pursuits:

The data-driven decisions have had a significant impact on individuals' academic and professional pursuits. Removal from university enrollment and employment may have affected livelihoods and future prospects.

7. Ethical Considerations:

I urge you to consider the ethical implications of data-driven decisions and the consequences faced by individuals, particularly in terms of expulsion from university enrollment and termination from employment.

8. Data Retention and Usage:

I request clarification on the retention and future usage of genetic and health data, ensuring alignment with the principles of consent and data protection under the Genetic Non-Discrimination Act.

9. Public Trust and Confidence:

Maintaining public trust and confidence in government institutions is paramount, especially during times of crisis. Upholding privacy and data protection standards is essential for fostering trust.

10. Collaboration with Stakeholders:

I recommend collaborative efforts between public health authorities, academic institutions, and privacy advocates to ensure that data collection, usage, and disclosure adhere to ethical and legal standards.

11. Genetic Testing:

I inquire about the genetic testing conducted to detect conditions like 1p36 deletion syndrome, which may be linked to the vaccine. Transparent reporting on such testing and its outcomes is vital.

I request as much unredacted material as possible, given the limitations of the Freedom of Information and Privacy Act, I believe it paramount to release all of this information to the general public to give fully informed consent.

[para 9] The Applicant's submission includes 18 pages of what appear to be records obtained from a different FOIP request. These records are comprised of emails between Public Body employees and other individuals, which appear to generally relate to the global coalition for value in healthcare initiative of the World Economic Forum. It also includes:

- a publication about HostSeq;

- a printout of a Public Body webpage announcing a partnership among several provincial health foundations to preserving COVID-19 samples for future research of the virus;
- two charts showing the leading cause of death for different years, source unknown;
- several tables showing hospitalizations for COVID-19, by vaccine status for October 2022, source unknown;
- a printout from a Government of Alberta website discussing how COVID-19 health statistics are created;
- three pages from each of the two decisions raised in item 5 of the summary above;
- a publication discussing the Genetic Non-Discrimination Act;
- a full copy of the federal Genetic Non-Discrimination Act, S.C. 2017, c.3;
- a joint policy statement issued by the federal Privacy Commissioner and Alberta and BC's Information and Privacy Commissioners regarding the collection, use and disclosure of genetic test results, dated December 2017

[para 10] Lastly, the Applicant included the single-page record he received in response to his access request relevant to this inquiry. That page includes the number of patients hospitalized with COVID-19 by vaccination status. Those numbers appear to relate to the hospitalizations on September 7, 2021 at 7am.

[para 11] I will consider the Applicant's arguments only as they pertain to the issue in this inquiry.

[para 12] A public body's obligation to respond to an applicant's access request is set out in section 10, which states in part:

10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[para 13] The duty to assist includes responding openly, accurately and completely, as well as conducting an adequate search. The Public Body bears the burden of proof with respect to its obligations under section 10(1), as it is in the best position to describe the steps taken to assist the applicant (see Order 97-006, at para. 7). An adequate search has two components in that every reasonable effort must be made to search for the actual records requested, and the applicant must be informed in a timely fashion about what has been done to search for the requested records (Order 96-022 at para. 14; Order 2001-016 at para. 13; Order F2007-029 at para. 50).

[para 14] In Order F2007-029, the former Commissioner described the kind of evidence that assists a decision-maker to determine whether a public body has made reasonable efforts to search for records:

In general, evidence as to the adequacy of a search should cover the following points:

- The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
- The scope of the search conducted - for example: physical sites, program areas, specific databases, off-site storage areas, etc.
- The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
- Who did the search
- Why the Public Body believes no more responsive records exist than what has been found or produced (at para. 66)

[para 15] In its submission, the Public Body states that it has received a significant number of access requests for records relating to the COVID-19 pandemic. To address these requests, the Public Body assigned one employee (Dr. S) familiar with records relating to COVID-19 in the custody or control of the Public Body, as a single point of contact for these requests. Dr. S is the Medical Officer of Health of Provincial Public Health Surveillance and Informatics with the Public Body and at the relevant time was the Director of the Public Health Branch of the Emergency Command Centre responding to the COVID-19 pandemic. With its submission, the Public Body provided an affidavit sworn by Dr. S. It also provided an affidavit sworn by the Advisor of the Information Access Services area of the Public Body who processed the Applicant's request.

[para 16] In his affidavit, Dr. S states that he informed the Advisor processing the request that the portion of the Applicant's request relating to the effectiveness of COVID-19 vaccines should be redirected to Alberta Health,

... as it is the Alberta Advisory Committee on Immunization which reports to the Government of Alberta, that consolidates evidence, and makes recommendations to the government on the use of COVID vaccines. (Affidavit, at para. 4)

[para 17] The Public Body states that it does not have records responsive to this part of the Applicant's request. In his affidavit, the Advisor states that he attempted to formally transfer the Applicant's request to Alberta Health upon learning that it may have responsive records; however, the Advisor states he did not receive a response from Alberta Health.

[para 18] Dr. S states that he requested the Public Health Surveillance and Informatics (PHSI) Division to search for records responsive to the first part of the Applicant's request relating to the number of patients in hospital with COVID-19 that are vaccinated or unvaccinated, death counts, etc. Dr. S states (affidavit, at para. 6):

I have been advised, and believe it to be true, that the following data tables were identified as potentially including information responsive to the request¹:

¹ The list in Dr. S's affidavit excludes an item (b), which appears to be a typo.

- a. Communicable Disease/ Outbreak Management (CDOM) -COVID-19 Cases entered by Communicable Disease Control (CDC) investigators. AHS database.
- c. Provincial Surveillance Initiate COVID-19 Case Records-Additional source of COVID-19 Case records. Alberta Health database. Provlab COVID-19 Laboratory Records -COVID-19 lab records used to identify additional cases not yet entered into source (a) or (b). AHS database.
- d. Admission, Discharge, and Transfer (ADT) Data -Detailed hospitalizations encounter records used to identify hospitalization status of patients identified from sources (a), (b), and (C). AHS database.
- e. ImmARI -Immunization records. Alberta Health database.
- f. Meditech Immunization Records - Immunization records for doses administered by AHS. AHS database.
- g. Connect Care Immunization Records - Immunization records for doses administered by AHS in certain settings (ex. Doses administered while in acute care setting of site that had already switched to the Connect Care system). AHS database.

[para 19] Dr. S further states that he met with the Executive Director and other members of the PSHI team to discuss the request, and that they determined that the Public Body did not have records that directly responded to the Applicant's request. Dr. S further states (affidavit, at para. 7):

The wording of the request would require extraction of data and potentially data-matching identifiable personal information from various databases to fully answer the request. We then discussed whether a record could be created from available data sources to satisfy the request. We determined that AHS could not use information within the custody and control of Alberta Health to data match for the purposes of responding to the entirety of the request. Information within the custody and control of Alberta Health included the above listed (b) Provincial Surveillance Initiate COVID-19 Case Records, and (e) ImmARI, an Alberta Health data set. We determined that information related to "death from covid-19 confirmed or covid-19 variant" would be in the custody and control of Alberta Health. As AHS provides acute care in the province of Alberta, we do not have complete mortality data for the province.

[para 20] Dr. S states that the PSHI team was able to use information in the Public Body's Communicable Diseases and Outbreak Management Database (CDOM) along with the other listed at paragraph 6 of the affidavit (reproduced above) to extract information responsive to the portion of the request for information about the number of patients currently in hospital with COVID-19, vaccination status, and related statistics. Dr. S states that the single page of responsive records was created to include this information for the date of September 7, 2021. Dr. S states that while the Public Body was able to compile these statistics in a record, the Public Body did not have studies or reports that were responsive to the request.

[para 21] Dr. S further states that given the content and time period of the request, only electronic records would contain responsive information; therefore, physical records were

not searched. Dr. S asserts that it is his belief that there are no further records that are responsive to the Applicant's access request.

[para 22] In his affidavit, the Advisor also states that he is unable to identify any further locations to search for responsive records.

Analysis

[para 23] The Applicant has not explained why he believes the Public Body has additional records responsive to his request. With respect to the single page of responsive records, the Applicant had requested "current" statistics regarding hospitalizations etc.; the Public Body compiled statistics for a single day falling less than a week after the Public Body received the Applicant's request (the record relates to statistics for September 7, 2021, and the request was received on September 2, 2021). The Applicant did not specify whether he was seeking information other than what he received in this record.

[para 24] I accept the Public Body's explanation that it is Alberta Health rather than it (Alberta Health Services) that would have records responsive to part of the Applicant's request. The distinction between these public bodies and their respective scope may not be apparent to many individuals.

[para 25] The Public Body notes that some of the links provided in the Applicant's submission related to Government of Alberta or Alberta Health websites, and not to the Public Body. This also indicates that the Applicant may be misunderstanding the Public Body's response that *it* does not have responsive records, but other public bodies might. In other words, if the Applicant's submission is intended to show that responsive records exist, this does not necessarily mean that the Public Body has custody or control of them such that it is responsible for providing them in response to an access request.

[para 26] Having reviewed the submissions before me and the one page of responsive records, I accept the Public Body's explanation of its search, and how it determined that it does not have responsive records. I agree that given the role of Dr. S at the relevant time, he was in the best position to have information about responsive records. There are no apparent gaps in the search conducted by the Public Body. The information provided in the Applicant's submission does not indicate that the Public Body ought to have located additional responsive records. Based on the access request and submissions, I also accept that the record created for the Applicant represents a reasonable interpretation of the Applicant's request. If the Applicant believes that this record is not sufficiently responsive and/or that the Public Body is able to create other responsive records from information in its custody or control, he hasn't indicated as much.

[para 27] With respect to the second part of conducting an adequate search – informing the Applicant of what has been done to locate records – the Public Body states that its response to the Applicant fulfills this obligation.

[para 28] The Public Body's September 23, 2021 response to the Applicant, reproduced in part at paragraph 2 of this Order, informed the Applicant why records responsive to part of his request were not located. The Public Body explained why it did not have custody or control over some types of records sought by the Applicant, and explained which public body would have custody or control of relevant records. The Public Body also provided contact information for the FOIP area of Alberta Health, where the Applicant could submit a new access request. I agree that this response fulfills the Public Body's obligation under section 10.

[para 29] In his affidavit, the Advisor states that he attempted to transfer the request to Alberta Health under section 15(1). Section 15(1) of the Act permits one public body to transfer an access request to another under certain circumstances. Where a request is transferred under section 15(1), section 15(2) sets out specific obligations for the public body making the transfer, and the public body receiving the transfer. These provisions state:

15(1) Within 15 days after a request for access to a record is received by a public body, the head of the public body may transfer the request and, if necessary, the record to another public body if

- (a) the record was produced by or for the other public body,*
- (b) the other public body was the first to obtain the record, or*
- (c) the record is in the custody or under the control of the other public body.*

(2) If a request is transferred under subsection (1),

- (a) the head of the public body who transferred the request must notify the applicant of the transfer as soon as possible, and*
- (b) the head of the public body to which the request is transferred must make every reasonable effort to respond to the request not later than 30 days after receiving the request unless that time limit is extended under section 14.*

[para 30] Section 15 is not at issue in this inquiry and the Public Body's submission on this point is limited. As such, I am not certain why the Advisor was not able to successfully transfer the request to Alberta Health. Possibly the Advisor believed that the transfer could not be completed because Alberta Health did not respond to the Public Body.

[para 31] It is not clear that a lack of acknowledgement from Alberta Health means that the Public Body could not proceed with transferring the Applicant's access request. In Order 2000-021, former Commissioner Clark found that if a public body is satisfied that it is appropriate to transfer a request under section 15(1), it is not required to consult with the public body to which the request is to be transferred, before transferring the request. The Commissioner reasoned that the short timeline set out in section 15(1) of the

Act for transferring a request (15 days) would make it difficult to undertake a consultation prior to transferring the request (see para. 37).

[para 32] More recently, in Order F2022-42, the adjudicator found (at para. 30):

In view of the above, it stands to reason that the transfer process permitted under section 15 should not be thwarted simply because the public body on the receiving end of a transfer has not organized itself to efficiently respond to an access request... This is so whether an access request comes directly from an applicant, or is transferred from another public body.

[para 33] I agree with these analyses; in this case, had the Advisor provided the Applicant's access request to Alberta Health, this may have been sufficient to complete a transfer under section 15(1) and trigger the associated obligations under section 15(2). That said, transferring requests under section 15(1) is discretionary, such that the Public Body was not obligated complete the transfer. Further, as stated, section 15 is not at issue in this inquiry and the Public Body has not made detailed submissions regarding this provision. As such, I am not making any findings on this point; I merely offer these comments for the Public Body to consider in similar circumstances in the future.

[para 34] Lastly, I acknowledge the effort made by the Advisor to transfer the access request when he was not required to do so. It is unfortunate that Alberta Health did not respond to the Public Body.

Conclusion

[para 35] I find that the Public Body conducted an adequate search for responsive records.

[para 36] The Applicant may want to make an access request to Alberta Health for the records he is seeking, if he has not done so already.

V. ORDER

[para 37] I make this Order under section 72 of the Act.

[para 38] I find that the Public Body met its duty to assist the Applicant by conducting an adequate search for responsive records.

Amanda Swaneck
Adjudicator